

**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke Probation
Against:

CYNTHIA ANN LEWIS
P.O. Box 142
Moss Landing, CA 95039-0142

Registered Nurse License No. 647854

Respondent.

Case No. 2004-267

OAH No. 2007100621

DECISION AND ORDER

The attached Stipulated Settlement and Disciplinary Order is hereby adopted by the Board of Registered Nursing, Department of Consumer Affairs, as its Decision in this matter.

This Decision shall become effective on August 27, 2008.

It is so ORDERED August 27, 2008.

LaTranene White

FOR THE BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS

1 EDMUND G. BROWN JR., Attorney General
of the State of California
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7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Petition to Revoke Probation
13 Against:

14 **CYNTHIA ANN LEWIS**
P.O. Box 142
15 Moss Landing, CA 95039-0142

16 **Registered Nurse License No. 647854**

Respondent

Case No. 2004-267

OAH No. 2007100621

**STIPULATED SETTLEMENT AND
DISCIPLINARY ORDER**

17 IT IS HEREBY STIPULATED AND AGREED by and between the parties to the
18 above-entitled proceedings that the following matters are true:

19 PARTIES

20 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) is the Executive Officer of
21 the Board of Registered Nursing. She brought this action solely in her official capacity and is
22 represented in this matter by Edmund G. Brown Jr., Attorney General of the State of California,
23 by Aspasia A. Papavassiliou, Deputy Attorney General.

24 2. Cynthia Ann Lewis (Respondent) is represented in this proceeding by
25 attorney James E. Leininger, whose address is 181 Devine Street, San Jose, CA 95110.

26 3. On or about November 12, 2004, the Board of Registered Nursing issued
27 Registered Nurse License No. 647854 to Cynthia Ann Lewis (Respondent), pursuant to a
28 decision and order in the case titled "In the Matter of the Statement of Issues Against Cynthia

1 Ann Lewis," Case No. 2004-267.¹ The Registered Nurse License expires on June 30, 2008,
2 unless renewed.

3 4. Pursuant to the decision and order in the case titled "In the Matter of the
4 Statement of Issues Against Cynthia Ann Lewis," Case No. 2004-267, Respondent's registered
5 nurse license was revoked; however, the revocation was stayed and Respondent's license was
6 placed on probation for a period of (3) years on certain terms and conditions. The effective date
7 of the decision was October 22, 2004.

8 JURISDICTION

9 5. Petition to Revoke Probation No. 2004-267 was filed before the Board of
10 Registered Nursing (Board), Department of Consumer Affairs, and is currently pending against
11 Respondent. The Petition to Revoke Probation and all other statutorily required documents were
12 properly served on Respondent on August 14, 2007. Respondent timely filed her Notice of
13 Defense contesting the Petition to Revoke Probation. A copy of Petition to Revoke Probation
14 No. 2004-267 is attached as exhibit A and incorporated herein by reference.

15 ADVISEMENT AND WAIVERS

16 6. Respondent has carefully read, fully discussed with counsel, and
17 understands the charges and allegations in Petition to Revoke Probation No. 2004-267.
18 Respondent has also carefully read, fully discussed with counsel, and understands the effects of
19 this Stipulated Settlement and Disciplinary Order.

20 7. Respondent is fully aware of her legal rights in this matter, including the
21 right to a hearing on the charges and allegations in the Petition to Revoke Probation; the right to
22 be represented by counsel at her own expense; the right to confront and cross-examine the
23 witnesses against her; the right to present evidence and to testify on her own behalf; the right to
24 the issuance of subpoenas to compel the attendance of witnesses and the production of
25 documents; the right to reconsideration and court review of an adverse decision; and all other
26

27 ¹ The Petition to Revoke Probation at issue erroneously stated that Respondent's
28 license was issued on June 12, 2004, and that the underlying case was titled "In the Matter of the
Accusation Against Cynthia Lewis."

rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent admits the truth of each and every charge and allegation in Petition to Revoke Probation No. 2004-267.

10. Respondent agrees that her Registered Nurse License is subject to discipline and she agrees to be bound by the Board's imposition of discipline as set forth in the Disciplinary Order below.

CONTINGENCY

11. This stipulation shall be subject to approval by the Board of Registered Nursing. Respondent understands and agrees that counsel for Complainant and the staff of the Board of Registered Nursing may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or her counsel. By signing the stipulation, Respondent understands and agrees that she may not withdraw her agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

12. The parties understand and agree that facsimile copies of this Stipulated Settlement and Disciplinary Order, including facsimile signatures thereto, shall have the same force and effect as the originals.

13. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

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1 representatives.

2 4. **Residency, Practice, or Licensure Outside of State.** Periods of
3 residency or practice as a registered nurse outside of California shall not apply toward a reduction
4 of this probation time period. Respondent's probation is tolled, if and when she resides outside
5 of California. Respondent must provide written notice to the Board within 15 days of any change
6 of residency or practice outside the state, and within 30 days prior to re-establishing residency or
7 returning to practice in this state.

8 Respondent shall provide a list of all states and territories where she has ever been
9 licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further
10 provide information regarding the status of each license and any changes in such license status
11 during the term of probation. Respondent shall inform the Board if she applies for or obtains a
12 new nursing license during the term of probation.

13 5. **Submit Written Reports.** Respondent, during the period of probation,
14 shall submit or cause to be submitted such written reports/declarations and verification of actions
15 under penalty of perjury, as required by the Board. These reports/declarations shall contain
16 statements relative to Respondent's compliance with all the conditions of the Board's Probation
17 Program. Respondent shall immediately execute all release of information forms as may be
18 required by the Board or its representatives.

19 Respondent shall provide a copy of this Decision to the nursing regulatory agency
20 in every state and territory in which she has a registered nurse license.

21 6. **Function as a Registered Nurse.** Respondent, during the period of
22 probation, shall engage in the practice of registered nursing in California for a minimum of 24
23 hours per week for 6 consecutive months or as determined by the Board.

24 For purposes of compliance with the section, "engage in the practice of registered
25 nursing" may include, when approved by the Board, volunteer work as a registered nurse, or
26 work in any non-direct patient care position that requires licensure as a registered nurse.

27 The Board may require that advanced practice nurses engage in advanced practice
28 nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the

1 Board.

2 If Respondent has not complied with this condition during the probationary term,
3 and Respondent has presented sufficient documentation of her good faith efforts to comply with
4 this condition, and if no other conditions have been violated, the Board, in its discretion, may
5 grant an extension of Respondent's probation period up to one year without further hearing in
6 order to comply with this condition. During the one year extension, all original conditions of
7 probation shall apply.

8 7. **Employment Approval and Reporting Requirements.** Respondent
9 shall obtain prior approval from the Board before commencing or continuing any employment,
10 paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all
11 performance evaluations and other employment related reports as a registered nurse upon request
12 of the Board.

13 Respondent shall provide a copy of this Decision to her employer and immediate
14 supervisors prior to commencement of any nursing or other health care related employment.

15 In addition to the above, Respondent shall notify the Board in writing within
16 seventy-two (72) hours after she obtains any nursing or other health care related employment.
17 Respondent shall notify the Board in writing within seventy-two (72) hours after she is
18 terminated or separated, regardless of cause, from any nursing, or other health care related
19 employment with a full explanation of the circumstances surrounding the termination or
20 separation.

21 8. **Supervision.** Respondent shall obtain prior approval from the Board
22 regarding Respondent's level of supervision and/or collaboration before commencing or
23 continuing any employment as a registered nurse, or education and training that includes patient
24 care.

25 Respondent shall practice only under the direct supervision of a registered nurse
26 in good standing (no current discipline) with the Board of Registered Nursing, unless alternative
27 methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician)
28 are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

(a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.

(b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.

(c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.

(d) Home Health Care - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by Respondent with or without Respondent present.

9. **Employment Limitations.** Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict Respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined

1 worksite(s) and shall not work in a float capacity.

2 If Respondent is working or intends to work in excess of 40 hours per week, the
3 Board may request documentation to determine whether there should be restrictions on the hours
4 of work.

5 10. **Complete a Nursing Course(s).** Respondent, at her own expense, shall
6 enroll and successfully complete a course(s) relevant to the practice of registered nursing no later
7 than six months prior to the end of her probationary term.

8 Respondent shall obtain prior approval from the Board before enrolling in the
9 course(s). Respondent shall submit to the Board the original transcripts or certificates of
10 completion for the above required course(s). The Board shall return the original documents to
11 Respondent after photocopying them for its records.

12 11. **Violation of Probation.** If Respondent violates the conditions of her
13 probation, the Board after giving Respondent notice and an opportunity to be heard, may set
14 aside the stay order and impose the stayed discipline (revocation/suspension) of Respondent's
15 license.

16 If during the period of probation, an accusation or petition to revoke probation has
17 been filed against Respondent's license or the Attorney General's Office has been requested to
18 prepare an accusation or petition to revoke probation against Respondent's license, the
19 probationary period shall automatically be extended and shall not expire until the accusation or
20 petition has been acted upon by the Board.

21 12. **License Surrender.** During Respondent's term of probation, if she ceases
22 practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of
23 probation, Respondent may surrender her license to the Board. The Board reserves the right to
24 evaluate Respondent's request and to exercise its discretion whether to grant the request, or to
25 take any other action deemed appropriate and reasonable under the circumstances, without
26 further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent
27 will no longer be subject to the conditions of probation.

28 Surrender of Respondent's license shall be considered a disciplinary action and

1 shall become a part of Respondent's license history with the Board. A registered nurse whose
2 license has been surrendered may petition the Board for reinstatement no sooner than the
3 following minimum periods from the effective date of the disciplinary decision:

4 (1) Two years for reinstatement of a license that was surrendered for any
5 reason other than a mental or physical illness; or

6 (2) One year for a license surrendered for a mental or physical illness.

7 **13. Participate in Treatment/Rehabilitation Program for Chemical**

8 **Dependence.** Respondent, at her expense, shall successfully complete during the probationary
9 period or shall have successfully completed prior to commencement of probation a Board-
10 approved treatment/rehabilitation program of at least six months duration. As required, reports
11 shall be submitted by the program on forms provided by the Board. If Respondent has not
12 completed a Board-approved treatment/rehabilitation program prior to commencement of
13 probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in
14 a program. If a program is not successfully completed within the first nine months of probation,
15 the Board shall consider Respondent in violation of probation.

16 Based on Board recommendation, each week Respondent shall be required to
17 attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics
18 Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed
19 by the Board. If a nurse support group is not available, an additional 12-step meeting or
20 equivalent shall be added. Respondent shall submit dated and signed documentation confirming
21 such attendance to the Board during the entire period of probation. Respondent shall continue
22 with the recovery plan recommended by the treatment/rehabilitation program or a licensed
23 mental health examiner and/or other ongoing recovery groups.

24 **14. Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent
25 shall completely abstain from the possession, injection or consumption by any route of all
26 controlled substances and all psychotropic (mood altering) drugs, including alcohol, except when
27 the same are ordered by a health care professional legally authorized to do so as part of
28 documented medical treatment. Respondent shall have sent to the Board, in writing and within

1 fourteen (14) days, by the prescribing health professional, a report identifying the medication,
2 dosage, the date the medication was prescribed, the Respondent's prognosis, the date the
3 medication will no longer be required, and the effect on the recovery plan, if appropriate.

4 Respondent shall identify for the Board a single physician, nurse practitioner or
5 physician assistant who shall be aware of Respondent's history of substance abuse and will
6 coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled
7 substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician
8 assistant shall report to the Board on a quarterly basis Respondent's compliance with this
9 condition. If any substances considered addictive have been prescribed, the report shall identify a
10 program for the time limited use of any such substances.

11 The Board may require the single coordinating physician, nurse practitioner, or
12 physician assistant to be a specialist in addictive medicine, or to consult with a specialist in
13 addictive medicine.

14 **15. Submit to Tests and Samples.** Respondent, at her expense, shall
15 participate in a random, biological fluid testing or a drug screening program which the Board
16 approves. The length of time and frequency will be subject to approval by the Board.
17 Respondent is responsible for keeping the Board informed of Respondent's current telephone
18 number at all times. Respondent shall also ensure that messages may be left at the telephone
19 number when she is not available and ensure that reports are submitted directly by the testing
20 agency to the Board, as directed. Any confirmed positive finding shall be reported immediately
21 to the Board by the program and Respondent shall be considered in violation of probation.

22 In addition, Respondent, at any time during the period of probation, shall fully
23 cooperate with the Board or any of its representatives, and shall, when requested, submit to such
24 tests and samples as the Board or its representatives may require for the detection of alcohol,
25 narcotics, hypnotics, dangerous drugs, or other controlled substances.

26 If Respondent has a positive drug screen for any substance not legally authorized
27 and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the
28 Board files a petition to revoke probation or an accusation, the Board may suspend Respondent

1 from practice pending the final decision on the petition to revoke probation or the accusation.

2 This period of suspension will not apply to the reduction of this probationary time period.

3 If Respondent fails to participate in a random, biological fluid testing or drug
4 screening program within the specified time frame, Respondent shall immediately cease practice
5 and shall not resume practice until notified by the Board. After taking into account documented
6 evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the
7 Board may suspend Respondent from practice pending the final decision on the petition to
8 revoke probation or the accusation. This period of suspension will not apply to the reduction of
9 this probationary time period.

10
11 ACCEPTANCE

12 I have carefully read the above Stipulated Settlement and Disciplinary Order and
13 have fully discussed it with my attorney, James E. Leininger. I understand the stipulation and the
14 effect it will have on my Registered Nurse License. I enter into this Stipulated Settlement and
15 Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the
16 Decision and Order of the Board of Registered Nursing.

17 DATED: 3/31/08

18 
19 CYNTHIA ANN LEWIS
20 Respondent

21 I have read and fully discussed with Respondent Cynthia Ann Lewis the terms and
22 conditions and other matters contained in the above Stipulated Settlement and Disciplinary
23 Order. I approve its form and content.

24 DATED: 3/31/08

25 
26 JAMES E. LEININGER
27 Attorney for Respondent
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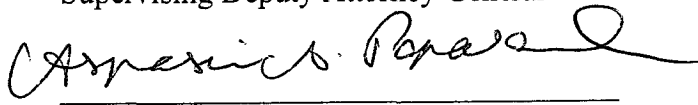
ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Board of Registered Nursing of the Department of Consumer Affairs.

DATED: 4/2/2008

EDMUND G. BROWN JR., Attorney General
of the State of California

FRANK H. PACOE
Supervising Deputy Attorney General



ASPASIA A. PAPA VASSILIOU
Deputy Attorney General

Attorneys for Complainant

DOJ Matter ID: SF2007401826

Exhibit A

Petition to Revoke Probation No. 2004-267

1 EDMUND G. BROWN JR., Attorney General
of the State of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 ASPASIA A. PAPAVASSILIOU, State Bar No. 196360
Deputy Attorney General
4 California Department of Justice
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5547
6 Facsimile: (415) 703-5480

7 Attorneys for Complainant

8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

11 In the Matter of the Petition to Revoke Probation
Against:

Case No. 2004-267

12 **CYNTHIA ANN LEWIS**
13 P.O. Box 142
Moss Landing, CA 95039-0142

**PETITION TO REVOKE
PROBATION**

14 Registered Nurse License No. 647854

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Ruth Ann Terry, M.P.H., R.N (Complainant) brings this Petition to Revoke
20 Probation solely in her official capacity as the Executive Officer of the Board of Registered
21 Nursing, Department of Consumer Affairs.

22 2. On or about June 12, 2004, the Board of Registered Nursing issued
23 Registered Nurse, License Number 647854 to Cynthia Ann Lewis (Respondent). The Registered
24 Nurse License expires on June 30, 2008 unless renewed.

25 3. In a disciplinary action entitled "In the Matter of Accusation Against
26 Cynthia Lewis aka Cynthia Ann Freedom," Case No. 2004-267, the Board of Registered Nursing
27 issued a decision, effective November 12, 2004, in which Respondent's Registered Nurse License
28 was revoked. However, the revocation was stayed and Respondent's license was placed on

1 probation for a period of three (3) years with certain terms and conditions. A copy of that
2 decision is attached as Exhibit A and is incorporated by reference.

3 JURISDICTION

4 4. This Petition to Revoke Probation is brought before the Board of
5 Registered Nursing (Board), Department of Consumer Affairs.

6 FIRST CAUSE TO REVOKE PROBATION

7 (Failure to Comply With Terms and Conditions of Probation)

8 5. At all times after the effective date of Respondent's probation, Condition 2
9 stated:

10 **Comply with the Board's Probation Program.** Respondent shall fully comply
11 with the conditions of the Probation Program established by the Board and
12 cooperate with representatives of the Board in its monitoring and investigation of
13 the Respondent's compliance with the Board's Probation Program. Respondent
shall inform the Board in writing within no more than 15 days of any address
change and shall at all times maintain an active, current license status with the
Board, including during any period of suspension.

14 Upon successful completion of probation, Respondent's license shall be
15 fully restored.

16 6. Respondent's probation is subject to revocation because she failed to
17 comply with Probation Condition 2, referenced above. The facts and circumstances regarding
18 this violation are that Respondent failed to comply with Probation Condition 15, as set forth in
19 paragraphs 7-8, below, in that she failed to abstain from the use of drugs or alcohol, and that
20 Respondent failed to comply with Probation Condition 9, as set forth in paragraphs 9-10 below,
21 in that she failed to comply with employment limitations.

22 SECOND CAUSE TO REVOKE PROBATION

23 (Failure to Abstain From Drugs or Alcohol)

24 7. At all times after the effective date of Respondent's probation, Condition
25 15 stated:

26 **Abstain from Use of Psychotropic (Mood-Altering) Drugs.** Respondent shall
27 completely abstain from the possession, injection or consumption by any route of
28 all psychotropic (mood altering) drugs, including alcohol, except when the same
are ordered by a health care professional legally authorized to do so as part of
documented medical treatment. Respondent shall have sent to the Board, in

1 writing and within fourteen (14) days, by the prescribing health professional, a
2 report identifying the medication, dosage, the date the medication was prescribed,
3 the Respondent's prognosis, the date the medication will no longer be required,
4 and the effect on the recovery plan, if appropriate.

5 Respondent shall identify for the Board a single physician, nurse practitioner or
6 physician assistant who shall be aware of Respondent's history of substance abuse
7 and will coordinate and monitor any prescriptions for Respondent for dangerous
8 drugs, controlled substances or mood-altering drugs. The coordinating physician,
9 nurse practitioner, or physician assistant shall report to the Board on a quarterly
10 basis Respondent's compliance with this condition. If any substances considered
11 addictive have been prescribed, the report shall identify a program for the time
12 limited use of any such substances.

13 The Board may require the single coordinating physician, nurse practitioner, or
14 physician assistant to be a specialist in addictive medicine, or to consult with a
15 specialist in addictive medicine.

16 8. Respondent's probation is subject to revocation because she failed to
17 comply with Probation Condition 15, referenced above, in that she failed to abstain from drugs or
18 alcohol. The facts and circumstances regarding this violation are as follows:

19 A. On May 22, 2007, Respondent admitted to Probation Monitor Tim
20 Doherty that she had resumed drinking alcohol in January 2007;

21 B. Respondent tested positive for alcohol on the following dates:
22 January 16, 2007, February 13, 2007 and April 6, 2007;

23 C. Respondent tested "out of range" on the following dates: April 5,
24 2006, November 30, 2006, January 30, 2007, March 21, 2007, April 17, 2007, and May 16,
25 2007; and

26 D. Respondent provided a "diluted" test on May 9, 2005 and
27 November 30, 2005.¹

28 1. The "out of range" test results from November 2006 onward occurred when Respondent
provided urine samples that had creatinine levels below the laboratory reference ranges.
Creatinine is a product of muscle contraction excreted at a relatively constant rate in urine. The
normal range for creatinine in urine is 20 to 400 mg/d L. A creatinine level of less than 20
mg/dL suggests over-hydration of the urine by excessive drinking or intentionally diluting the
specimen with an adulterant such as water. The Board's Probationer Screen Report does not
list what validity tests were used to determine "out of range" and "diluted" samples prior to
November 2006.

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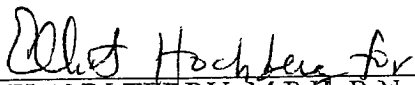
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3. Taking such other and further action as deemed necessary and proper.

DATED: 8/1/07


RUTH ANN TERRY, M.P.A., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SF2007401826
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Exhibit A

Decision and Order

Board of Registered Nursing Case No. 2004-267

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

Cynthia Lewis aka
Cynthia Ann Freedom
P.O. Box 194
Moss Landing, CA 95039

Case No. 2004-267

OAH No. N2004040222

Respondent.

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted by the Board of Registered Nursing as its Decision in the above-entitled matter.

This Decision shall become effective on October 22, 2004.

IT IS SO ORDERED this 22nd day of September 2004.

Sandra L. Erickson

President
Board of Registered Nursing
Department of Consumer Affairs
State of California

BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Statement of Issues
Against:

CYNTHIA LEWIS, aka
CYNTHIA ANN FREEDOM,
P. O. Box 194
Moss Landing, California 95039

Respondent.

Case No. 2004-267

OAH No. N 2004040222

PROPOSED DECISION

On June 16, 2004, in Oakland, California, Perry O. Johnson, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter.

Char Sachson, Deputy Attorney General, represented complainant Ruth Ann Terry, Executive Office, Board of Registered Nursing, State of California.

Respondent Cynthia Lewis appeared at the hearing, but she was not otherwise represented.

On June 16, 2004, the parties submitted the matter and the record closed.

FACTUAL FINDINGS

1. Complainant Ruth Ann Terry, M.P.H., R.N., ("complainant") in her official capacity as Executive Officer, Board of Registered Nursing, Department of Consumer Affairs, State of California, ("the Board") made, and caused to be filed, the statement of issues against Respondent.

History of Application for Licensure and Denial of Respondent's Application

2. On April 4, 2003, Respondent Cynthia Lewis ("Respondent") signed an application for licensure by examination as a registered nurse. On April 7, 2003, the Board received Respondent's application for licensure by examination.

By letter, dated August 13, 2003, the Board denied Respondent's application for licensure under six statutory sections¹ in the Business and Professions Code.

Respondent's History of Criminal Convictions

a. 2001 Conviction

3. On December 4, 2001, the California Superior Court in and for the County of Monterey, in case number MS198939A as titled *People v. Cynthia Ann Freedom*, convicted Respondent, on her plea of nolo contendere, of violating Vehicle Code section 23152, subdivision (a) [Driving An Automobile While Under the Influence of Alcohol], a misdemeanor.

The crime for which Respondent was convicted in December 2001 is substantially related to the qualifications, functions and duties of a registered nurse licensee.

4. The facts and circumstances giving rise to the conviction in December 2001 involved Respondent's acts in about November 2001 when she was arrested for drunk driving.

5. The consequences of Respondent's conviction in December 2001 resulted in the court suspending imposition of sentence while placing Respondent on probation for a term of five years. The terms and conditions of her probation included that she spend five days in county jail and that she pay a fine of \$1,450. Also, the court commanded Respondent to enroll in an approved "first offender" alcoholic beverage abuse counseling program. And, the court restricted Respondent's driving privilege.

b. 1987 Conviction

6. At the hearing of this matter, Respondent made an admission that in 1987, in a criminal proceeding titled *People v. Cynthia Ann Freedom*, the Municipal Court in and for Monterey County convicted her of the criminal offense of a vehicle hit and run that caused property damage and the crime of operating a motor vehicle without being insured.

The crime for which Respondent was convicted in 1987 is substantially related to the qualifications, functions and duties of a registered nurse licensee.

7. The facts and circumstances giving rise to the conviction in 1987 involve Respondent's criminal misconduct that involved her operation of a camper van on Highway One near Castroville in Monterey County. Respondent recalls that during heavy wind conditions she lost control of the van while seeking to exit the highway. The van that she

¹ In its letter, dated August 13, 2003, the Board expressed the grounds for denial of the application for licensure as flowing from Business and Professions Code sections 480, subdivision (a)(1); 480, subdivision (a)(3); 2761, subdivision (a); 2761, subdivision (f); 2762, subdivision (b); and 2762, subdivision (c).

operated clipped another vehicle on the highway. She fled from the scene, in part, due to her drinking alcoholic beverages that day and her knowledge that she did not have insurance for the camper van.

8. As a consequence of Respondent's conviction in 1987, Respondent enrolled in Alcoholics Anonymous counseling.

c. 1985 Conviction

9. At the hearing of this matter, Respondent made an admission that in 1985, in a criminal proceeding titled *People v. Cynthia Ann Freedom*, the Municipal Court in and for Monterey County convicted her of the criminal offense of driving a motor vehicle while under the influence of alcohol.

The crime for which Respondent was convicted in 1985 is substantially related to the qualifications, functions and duties of a registered nurse licensee.

10. The facts and circumstances giving rise to the conviction in 1985 involved Respondent's acts about 19 years ago when she was arrested for drunk driving.

Other Matter

11. Respondent acknowledges that in 1985 and 1987, she suffered convictions for the offense of Driving Under the Influence of Alcohol. However, Complainant offers no documentary evidence to establish the precise dates of the convictions, the name of the courts that imposed sentence or the actual degree of punishment that the courts imposed upon Respondent by reason of Respondent's conviction for driving while drunk.

12. In 2002, Respondent sustained separate falls that coincidentally led to respective fractures of her knees. For each injury, Respondent spent about three months on temporary disability leave. But, within a year, Respondent was away from her duties as a certified nurse assistant for a period of about six months.

Matters in Aggravation

13. Respondent will remain on probation until approximately December 2006, unless the superior court issues an order for her early discharge from probation.

14. Respondent has a history of three drunk driving type convictions that dates back nearly 20 years.

15. Respondent calls no witness to the hearing of this matter.

No one appears on Respondent's behalf to offer evidence pertaining to Respondent's reputation in her community for rational behavior, sobriety, honesty and integrity.

No person comes to the hearing to describe Respondent's attitude towards her past criminal action that led to the convictions mentioned above.

16. Respondent offers no competent evidence that she has devoted time or energy in affairs pertaining to civic, religious or community improvement organizations, which are designed to ameliorate societal ills. She claims that she attends Alcoholics Anonymous meetings, but her role is as a passive participant, rather than as a sponsor or group leader.

Matters in Mitigation

17. In February 1994 Respondent was first employed by the Community Hospital of the Monterey Peninsula as a "unit receptionist and nursing assistant" for a period of six years. She left that position in January 2000, when she moved to Sacramento for a short period of time.

In May 2000, Respondent returned to the Community Hospital of the Monterey Peninsula to work on the pediatric medical-surgical units as a unit receptionist and nursing assistant.

In June 2001, Respondent began work as a unit receptionist in the family birth center of the Community Hospital of the Monterey Peninsula. She also participated in the "Work Study II" program at the hospital. Since March 2003, Respondent has worked solely as a unit receptionist in the family birth center of the Community Hospital of the Monterey Peninsula.

Currently, Respondent works 32 hours to 40 hours per week. She holds an assignment on a shift that runs from 3:00 p.m. until 11:30 p.m.

18. For a period of about eight years before entering training to become a registered nurse, Respondent held licensure as a certified nurse assistant.

19. Respondent persuasively proclaims that she never consumed alcoholic beverages before going to work at the hospital. Respondent states that while performing duties as a certified nurse assistant she never was under the influence of alcoholic beverages.

Matters in Rehabilitation

20. Respondent declares that currently she completely abstains from use of alcoholic beverages.

21. As of the date of the hearing in this matter, Respondent has been sober and has lived a life for nearly three years that has been free of alcoholic beverages.

22. Since 2001, Respondent has had no arrests or criminal convictions.

23. Respondent offers three letters from officials² with the School of Nursing program of the Monterey Peninsula College and one letter³ from the Director for the Family Birth Center unit of the Community Hospital of the Monterey Peninsula. The four letters supplement and explain⁴ Respondent's testimony at the hearing.

The authors of the letters consistently point out that Respondent disclosed the fact of the past convictions for drunk driving and a hit and run automobile collision, as well as her recognition that abuse of alcoholic beverages was the root cause of her misconduct. The letters further point out that Respondent seriously attended to her study of nursing and that she never appeared to be impaired by reason of alcohol while in any nursing school program.

24. Regarding the hit and run incident in 1987, Respondent asserts that she made full restitution to the victims of her crime.

25. At the hearing of this matter, Respondent offered candid and remorseful testimony. She persuasively declared that her convictions over the years were due to alcoholic beverage abuse.

26. Respondent is now 46 years of age as her date of birth is May 22, 1958. She is the mother of a son, who is 25 years of age, who lives Sacramento.

Respondent maintains a relationship with her mother who also lives in Sacramento, near the group home of her brother, who has a developmental disability.

Ultimate Finding

27. The weight of evidence establishes that Respondent has attained a level of rehabilitation from her past history of abuse of alcoholic beverages and criminal convictions that it would not be against the public interest for her to hold a license as a registered nurse following her passing of the licensing examination.

² Letter, dated April 1, 2003, by Debra A. Schulte Hacker, RN, Ed. D., Director, School of Nursing, Monterey Peninsula College; letter, dated April 1, 2003, by Laura Loop, MSN, RN, Clinical Instructor, School of Nursing; Letter, dated March 12, 2003, by Patricia J. Nervino, MS, RN, Theory and Clinical Instructor.

³ Letter, dated June 14, 2004, by Debbie Gill, RN, Director, Family Birth Center, Community Hospital.

⁴ Government Code section 11513, subdivision (d).

LEGAL CONCLUSIONS

1. Business and Professions Code section 2736 establishes that the Board may deny a license when it finds that the applicant has committed any acts constituting grounds for denial of licensure under Code section 480.

Business and Professions Code section 480, subdivision (a)(1), provides that the Board may deny a license on the ground that the applicant has "been convicted of a crime."

Cause for denial of a license to Respondent exists under Business and Professions Code sections 480, subdivision (a)(1), and 2736, by reason of the matters set forth in Factual Findings 3, 6, and 9.

3. Business and Professions Code section 480, subdivision (a)(3), sets forth that the Board may deny a license on the ground that the applicant has "done any act which if done by a licensee [of the Board of Registered Nursing] would be grounds for suspension or revocation of a license."

Cause for denial of a license to Respondent exists under Business and Professions Code section 480, subdivision (a)(3), and 2736, by reason of the matters set forth in Factual Findings 3, 6 and 9.

4. Business and Professions Code section 2761, subdivision (f), declares that the Board may deny an application for a license because of "unprofessional conduct, which includes ... a conviction of ... any offense substantially related to the qualifications, functions, and duties of a registered nurse...."

Cause for denial of a license to Respondent exists under Business and Professions Code section 2761, subdivision (f), by reason of the matter set out in Factual Findings 3, 6 and 9.

5. Respondent establishes by the weight of evidence that she has been sufficiently rehabilitated from her past abuse of alcoholic beverages.

Respondent expresses remorse for the misconduct in using alcoholic beverages that posed a danger to herself and the public as she operated motor vehicles while under the influence of intoxicating drinks, and became involved in a hit and run incident.

Moreover, Respondent's devotion to her family and her sobriety establish her rehabilitation from the past misconduct.

Respondent has overcome the burden of proof that requires Respondent to establish that she possesses the qualities of character, sobriety, and integrity necessary for her to be

licensed as a registered nurse following her success with the board's examination for licensure.

ORDER

The application of Respondent Cynthia Lewis for licensure is hereby granted. Upon successful completion of the licensure examination and all other licensing requirements, a license shall be issued to Respondent. Said license shall immediately be revoked, the order of revocation stayed and Respondent placed on probation for a period of three (3) years on the following terms and conditions:

SEVERABILITY CLAUSE -

Each condition of probation contained herein is a separate and distinct condition. If any condition of this Order, or any application thereof, is declared unenforceable in whole, in part, or to any extent, the remainder of this Order, and all other applications thereof, shall not be affected. Each condition of this Order shall separately be valid and enforceable to the fullest extent permitted by law.

(1) OBEY ALL LAWS - Respondent shall obey all federal, state and local laws. A full and detailed account of any and all violations of law shall be reported by the Respondent to the Board in writing within seventy-two (72) hours of occurrence. To permit monitoring of compliance with this condition, Respondent shall submit completed fingerprint forms and fingerprint fees within 45 days of the effective date of the decision, unless previously submitted as part of the licensure application process.

CRIMINAL COURT ORDERS: If Respondent is under criminal court orders, including probation or parole, and the order is violated, this shall be deemed a violation of these probation conditions, and may result in the filing of an accusation and/or petition to revoke probation.

(2) COMPLY WITH THE BOARD'S PROBATION PROGRAM - Respondent shall fully comply with the conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the Respondent's compliance with the Board's Probation Program. Respondent shall inform the Board in writing within no more than 15 days of any address change and shall at all times maintain an active, current license status with the Board, including during any period of suspension.

Upon successful completion of probation, Respondent's license shall be fully restored.

(3) REPORT IN PERSON - Respondent, during the period of probation, shall appear in person at interviews/ meetings as directed by the Board or its designated representatives.

(4) RESIDENCY, PRACTICE, OR LICENSURE OUTSIDE OF STATE - Periods of residency or practice as a registered nurse outside of California shall not apply toward a reduction of this probation time period. Respondent's probation is tolled, if and when he or she resides outside of California. The Respondent must provide written notice to the Board within 15 days of any change of residency or practice outside the state, and within 30 days prior to re-establishing residency or returning to practice in this state.

Respondent shall provide a list of all states and territories where he or she has ever been licensed as a registered nurse, vocational nurse, or practical nurse. Respondent shall further provide information regarding the status of each license and any changes in such license status during the term of probation. Respondent shall inform the Board if she applies for or obtains a new nursing license during the term of probation.

(5) SUBMIT WRITTEN REPORTS - Respondent, during the period of probation, shall submit or cause to be submitted such written reports/declarations and verification of actions under penalty of perjury, as required by the Board. These reports or declarations shall contain statements relative to Respondent's compliance with all the conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Respondent shall provide a copy of this decision to the nursing regulatory agency in every state and territory in which she has a registered nurse license.

(6) FUNCTION AS A REGISTERED NURSE - Respondent, during the period of probation, shall engage in the practice of registered nursing in California for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

For purposes of compliance with the section, "engage in the practice of registered nursing" may include, when approved by the Board, volunteer work as a registered nurse, or work in any non-direct patient care position that requires licensure as a registered nurse.

The Board may require that advanced practice nurses engage in advanced practice nursing for a minimum of 24 hours per week for 6 consecutive months or as determined by the Board.

If Respondent has not complied with this condition during the probationary term, and the Respondent has presented sufficient documentation of his or her good faith efforts to comply with this condition, and if no other conditions have been violated, the Board, in its discretion, may grant an extension of the Respondent's probation period up to one year without further hearing in order to comply with this condition. During the one year extension, all original conditions of probation shall apply.

(7) EMPLOYMENT APPROVAL AND REPORTING

REQUIREMENTS - Respondent shall obtain prior approval from the Board before commencing or continuing any employment, paid or voluntary, as a registered nurse. Respondent shall cause to be submitted to the Board all performance evaluations and other employment related reports as a registered nurse upon request of the Board.

Respondent shall provide a copy of this decision to her employer and immediate supervisors prior to commencement of any nursing or other health care related employment.

In addition to the above, Respondent shall notify the Board in writing within seventy-two (72) hours after she obtains any nursing or other health care related employment. Respondent shall notify the Board in writing within seventy-two (72) hours after she is terminated or separated, regardless of cause, from any nursing, or other health care related employment with a full explanation of the circumstances surrounding the termination or separation.

(8) SUPERVISION - Respondent shall obtain prior approval from the Board regarding Respondent's level of supervision and/or collaboration before commencing or continuing any employment as a registered nurse, or education and training that includes patient care.

Respondent shall practice only under the direct supervision of a registered nurse in good standing (no current discipline) with the Board of Registered Nursing, unless alternative methods of supervision and/or collaboration (e.g., with an advanced practice nurse or physician) are approved.

Respondent's level of supervision and/or collaboration may include, but is not limited to the following:

- (a) Maximum - The individual providing supervision and/or collaboration is present in the patient care area or in any other work setting at all times.
- (b) Moderate - The individual providing supervision and/or collaboration is in the patient care unit or in any other work setting at least half the hours Respondent works.
- (c) Minimum - The individual providing supervision and/or collaboration has person-to-person communication with Respondent at least twice during each shift worked.
- (d) Home Health Care - If Respondent is approved to work in the home health care setting, the individual providing supervision and/or collaboration shall have person-to-person communication with Respondent as required by the Board each work day. Respondent shall maintain telephone or other telecommunication contact with the individual providing supervision and/or collaboration as required by the Board during each work day. The individual providing supervision and/or collaboration shall conduct, as required by the Board, periodic, on-site visits to patients' homes visited by the Respondent with or without Respondent present.

(9) EMPLOYMENT LIMITATIONS - Respondent shall not work for a nurse's registry, in any private duty position as a registered nurse, a temporary nurse placement agency, a traveling nurse, or for an in-house nursing pool.

Respondent shall not work for a licensed home health agency as a visiting nurse unless the registered nursing supervision and other protections for home visits have been approved by the Board. Respondent shall not work in any other registered nursing occupation where home visits are required.

Respondent shall not work in any health care setting as a supervisor of registered nurses. The Board may additionally restrict Respondent from supervising licensed vocational nurses and/or unlicensed assistive personnel on a case-by-case basis.

Respondent shall not work as a faculty member in an approved school of nursing or as an instructor in a Board approved continuing education program.

Respondent shall work only on a regularly assigned, identified and predetermined worksite(s) and shall not work in a float capacity.

If the Respondent is working or intends to work in excess of 40 hours per week, the Board may request documentation to determine whether there should be restrictions on the hours of work.

(10) COMPLETE A NURSING COURSE(S) - Respondent, at her own expense, shall enroll and successfully complete a course(s) relevant to the practice of registered nursing no later than six months prior to the end of her probationary term.

Respondent shall obtain prior approval from the Board before enrolling in the course(s). Respondent shall submit to the Board the original transcripts or certificates of completion for the above required course(s). The Board shall return the original documents to Respondent after photocopying them for its records.

(10) VIOLATION OF PROBATION - If a Respondent violate the conditions of her probation, the Board after giving the Respondent notice and an opportunity to be heard, may set aside the stay order and impose the stayed discipline (revocation/suspension) of the Respondent's license.

If during the period of probation, an accusation or petition to revoke probation has been filed against Respondent's license or the Attorney General's Office has been requested to prepare an accusation or petition to revoke probation against the Respondent's license, the probationary period shall automatically be extended and shall not expire until the accusation or petition has been acted upon by the Board.

(11) LICENSE SURRENDER - During Respondent's term of probation, if she ceases practicing due to retirement, health reasons or is otherwise unable to satisfy the conditions of probation, Respondent may surrender her license to the Board. The Board reserves the right to evaluate Respondent's request, and to exercise its discretion whether to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances, without further hearing. Upon formal acceptance of the tendered license and wall certificate, Respondent will no longer be subject to the conditions of probation.

Surrender of Respondent's license shall be considered a disciplinary action and shall become a part of Respondent's license history with the Board. A registered nurse whose license has been surrendered may petition the Board for reinstatement no sooner than the following minimum periods from the effective date of the disciplinary decision:

Two years for reinstatement of a license that was surrendered for any reason other than a mental or physical illness; or

One year for a license surrendered for a mental or physical illness.

(12) PHYSICAL EXAMINATION - Within 45 days of the effective date of this decision, Respondent, at her expense, shall have a licensed physician, nurse practitioner, or physician assistant, who is approved by the Board before the assessment is performed, submit an assessment of the Respondent's physical condition and capability to perform the duties of a registered nurse. Such an assessment shall be submitted in a format acceptable to the Board. If medically determined, a recommended treatment program will be instituted and followed by the Respondent with the physician, nurse practitioner, or physician assistant providing written reports to the Board on forms provided by the Board.

If Respondent is determined to be unable to practice safely as a registered nurse, the licensed physician, nurse practitioner, or physician assistant making this determination shall immediately notify the Board and Respondent by telephone, and the Board shall request that the

Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and shall not resume practice until notified by the Board. During this period of suspension, Respondent shall not engage in any practice for which a license issued by the Board is required until the Board has notified Respondent that a medical determination permits Respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the Respondent fails to have the above assessment submitted to the Board within the 45-day requirement, Respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the Respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

(14) PARTICIPATE IN TREATMENT/REHABILITATION PROGRAM FOR CHEMICAL DEPENDENCE - Respondent, at her expense, shall successfully complete during the probationary period or shall have successfully completed prior to commencement of probation a Board-approved treatment/rehabilitation program of at least six months duration. As required, reports shall be submitted by the program on forms provided by the Board. If Respondent has not completed a Board-approved treatment/rehabilitation program prior to commencement of probation, Respondent, within 45 days from the effective date of the decision, shall be enrolled in a program. If a program is not successfully completed within the first nine months of probation, the Board shall consider Respondent in violation of probation.

Based on Board recommendation, each week Respondent shall be required to attend at least one, but no more than five 12-step recovery meetings or equivalent (e.g., Narcotics Anonymous, Alcoholics Anonymous, etc.) and a nurse support group as approved and directed by the Board. If a nurse support group is not available, an additional 12-step meeting or equivalent shall be added. Respondent shall submit dated and signed documentation confirming such attendance to the Board during the entire period of probation. Respondent shall continue with the

recovery plan recommended by the treatment/rehabilitation program or a licensed mental health examiner and/or other ongoing recovery groups.

(15) ABSTAIN FROM USE OF PSYCHOTROPIC (MOOD-ALTERING) DRUGS - Respondent shall completely abstain from the possession, injection or consumption by any route of all psychotropic (mood altering) drugs, including alcohol, except when the same are ordered by a health care professional legally authorized to do so as part of documented medical treatment. Respondent shall have sent to the Board, in writing and within fourteen (14) days, by the prescribing health professional, a report identifying the medication, dosage, the date the medication was prescribed, the Respondent's prognosis, the date the medication will no longer be required, and the effect on the recovery plan, if appropriate.

Respondent shall identify for the Board a single physician, nurse practitioner or physician assistant who shall be aware of Respondent's history of substance abuse and will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances or mood-altering drugs. The coordinating physician, nurse practitioner, or physician assistant shall report to the Board on a quarterly basis Respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of any such substances.

The Board may require the single coordinating physician, nurse practitioner, or physician assistant to be a specialist in addictive medicine, or to consult with a specialist in addictive medicine.

(16) SUBMIT TO TESTS AND SAMPLES - Respondent, at her expense, shall participate in a random, biological fluid testing or a drug screening program which the Board approves. The length of time and frequency will be subject to approval by the Board. The Respondent is responsible for keeping the Board informed of Respondent's current telephone number at all times. Respondent shall also ensure that messages may be left at the telephone number when she is not available and ensure that reports are submitted directly by the testing agency to the Board, as directed. Any confirmed positive finding shall be reported immediately to the Board by the program and the Respondent shall be considered in violation of probation.

In addition, Respondent, at any time during the period of probation, shall fully cooperate with the Board or any of its representatives, and shall, when requested, submit to such tests and samples as the Board or its representatives may require for the detection of alcohol, narcotics, hypnotics, dangerous drugs, or other controlled substances.

If Respondent has a positive drug screen for any substance not legally authorized and not reported to the coordinating physician, nurse practitioner, or physician assistant, and the Board files a petition to revoke probation or an accusation, the Board may suspend Respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

If Respondent fails to participate in a random, biological fluid testing or drug screening program within the specified time frame, the Respondent shall immediately cease practice and shall not resume practice until notified by the Board. After taking into account documented evidence of mitigation, if the Board files a petition to revoke probation or an accusation, the Board may suspend Respondent from practice pending the final decision on the petition to revoke probation or the accusation. This period of suspension will not apply to the reduction of this probationary time period.

(17) MENTAL HEALTH EXAMINATION - The Respondent shall, within 45 days of the effective date of this decision, have a mental health examination including psychological testing as appropriate to determine her capability to perform the duties of a registered nurse. The examination will be performed by a psychiatrist, psychologist or other licensed mental health practitioner approved by the Board. The examining mental health practitioner will submit a written report of that assessment and recommendations to the Board. All costs are the responsibility of the Respondent. Recommendations for treatment, therapy or counseling made as a result of the mental health examination will be instituted and followed by the Respondent.

If Respondent is determined to be unable to practice safely as a registered nurse, the licensed mental health care practitioner making this determination shall immediately notify the Board and Respondent by telephone, and the Board shall request that

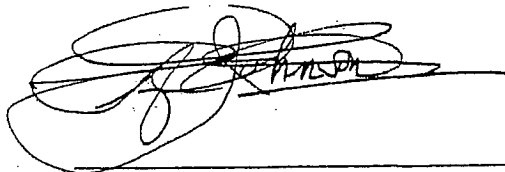
the Attorney General's office prepare an accusation or petition to revoke probation. Respondent shall immediately cease practice and may not resume practice until notified by the Board. During this period of suspension, Respondent shall not engage in any practice for which a license issued by the Board is required, until the Board has notified Respondent that a mental health determination permits Respondent to resume practice. This period of suspension will not apply to the reduction of this probationary time period.

If the Respondent fails to have the above assessment submitted to the Board within the 45-day requirement, Respondent shall immediately cease practice and shall not resume practice until notified by the Board. This period of suspension will not apply to the reduction of this probationary time period. The Board may waive or postpone this suspension only if significant, documented evidence of mitigation is provided. Such evidence must establish good faith efforts by the Respondent to obtain the assessment, and a specific date for compliance must be provided. Only one such waiver or extension may be permitted.

(18) THERAPY OR COUNSELING PROGRAM -

Respondent, at her expense, shall participate in an on-going counseling program until such time as the Board releases her from this requirement and only upon the recommendation of the counselor. Written progress reports from the counselor will be required at various intervals.

DATED: July 12, 2004

A handwritten signature in black ink, appearing to read "Perry O. Johnson", is written over a horizontal line.

PERRY O. JOHNSON
Administrative Law Judge
Office of Administrative Hearings

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6 Attorneys for Complainant

7 **BEFORE THE**
8 **BOARD OF REGISTERED NURSING**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Statement of Issues Against:

Case No. 2004-267

11 CYNTHIA LEWIS
12 P.O. Box 194
Moss Landing, CA 95039

STATEMENT OF ISSUES

13 Registered Nursing License

14 Respondent.

15
16 Complainant alleges:

17 PARTIES

18
19 1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Statement of
20 Issues solely in her official capacity as the Executive Officer of the Board of Registered Nursing,
21 Department of Consumer Affairs.

22 2. On or about April 7, 2003, the Board of Registered Nursing, Department
23 of Consumer Affairs received an application for a Registered Nursing License from Cynthia
24 Lewis (Respondent). On or about April 4, 2003, Cynthia Lewis certified under penalty of perjury
25 to the truthfulness of all statements, answers, and representations in the application. The Board
26 denied the application on August 13, 2003.

27 JURISDICTION

28 3. This Statement of Issues is brought before the Board of Registered

1 Nursing (Board), Department of Consumer Affairs, under the authority of the following laws.
2 All section references are to the Business and Professions Code unless otherwise indicated.

3 STATUTORY PROVISIONS

4 4. Section 2736 of the Business and Professions Code (Code) provides, in
5 pertinent part, that the Board of Registered Nursing (Board) may deny a license when it finds that
6 the applicant has committed any acts constituting grounds for denial of licensure under section
7 480 of that Code.

8 5. Section 480 of the Code states:

9 “(a) A board may deny a license regulated by this code on the grounds that the
10 applicant has one of the following:

11 “(1) Been convicted of a crime. A conviction within the meaning of this section
12 means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action
13 which a board is permitted to take following the establishment of a conviction may be taken
14 when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal,
15 or when an order granting probation is made suspending the imposition of sentence, irrespective
16 of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

17 ...

18 “(3) Done any act which if done by a licentiate of the business or profession in
19 question, would be grounds for suspension or revocation of license.

20 “The board may deny a license pursuant to this subdivision only if the crime or act
21 is substantially related to the qualifications, functions or duties of the business or profession for
22 which application is made.

23 ...

24 6. Section 2761 of the Code states:

25 “The board may take disciplinary action against a certified or licensed nurse or
26 deny an application for a certificate or license for any of the following:

27 “(a) Unprofessional conduct, which includes, but is not limited to, the following:

28 “(1) Incompetence, or gross negligence in carrying out usual certified or licensed

1 nursing functions.

2 “(2) A conviction of practicing medicine without a license in violation of Chapter
3 5 (commencing with Section 2000), in which event the record of conviction shall be conclusive
4 evidence thereof.

5 ...

6 “(f) Conviction of a felony or of any offense substantially related to the
7 qualifications, functions, and duties of a registered nurse, in which event the record of the
8 conviction shall be conclusive evidence thereof.”

9 ...

10 CAUSE FOR DENIAL OF APPLICATION

11 (CRIMINAL CONVICTIONS)

12 7. Applicant's application is subject to denial under sections 2736, 2761(f),
13 480(a)(1) and/or 480(a)(3) in that on or about December 4, 2001, in a criminal proceeding
14 entitled *People v. Cynthia Ann Freedom* in Monterey County Superior Court, Case Number
15 MS198939A, Applicant was convicted by a plea of nolo contendere of violating Vehicle Code
16 section 23152(a) (driving under the influence of alcohol), a misdemeanor. On or about
17 December 4, 2001, Applicant was sentenced as follows: 5 days jail time; 5 years probation; and
18 payment of a \$1450.00 fine.

19 8. Applicant's application is subject to denial under sections 2736, 2761(f),
20 480(a)(1) and/or 480(a)(3) in that in 1987, in a criminal proceeding entitled *People v. Cynthia Ann*
21 *Freedom*, Applicant was convicted of having a hit and run accident causing property damage, and
22 driving without insurance.

23 9. Applicant's application is subject to denial under sections 2736, 2761(f),
24 480(a)(1) and/or 480(a)(3) in that in 1985, in a criminal proceeding entitled *People v. Cynthia Ann*
25 *Freedom*, Applicant was convicted of driving under the influence of alcohol.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Denying the application of Cynthia Lewis for a Registered Nursing License;
2. Taking such other and further action as deemed necessary and proper.

DATED: 3/24/04


RUTH ANN TERRY, M.P.H., R.N.
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

SF2004400255

statement of issues.wpd